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SWINERTON BUILDERS and
SWINERTON INCORPORATED

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

SWINERTON BUILDERS, a California
corporation; and SWINERTON
INCORPORATED, a California corporation,

Plaintiffs,

v.

AMERICAN HOME ASSURANCE
COMPANY; NATIONAL UNION FIRE
INSURANCE COMPANY OF PITTSBURGH,
PA.; and DOES 1 through 250, inclusive,

Defendants.

CASE NO. CV 12-06047 EMC

**JOINT CASE MANAGEMENT
STATEMENT & [PROPOSED]
ORDER** Resetting CMC

Judge: Hon. Edward M. Chen
Courtroom: 5
Date: October 3, 2013
Time: 9:00 a.m.
Trial Date: N/A

Complaint Filed: November 29, 2012

The parties to the above-entitled action jointly submit this JOINT CASE MANAGEMENT STATEMENT & PROPOSED ORDER pursuant to the Standing Order for All Judges of the Northern District of California dated July 1, 2011 and Civil Local Rule 16-9.

1. Jurisdiction & Service

Plaintiffs' allege that jurisdiction in this matter is based upon diversity between the parties pursuant to 28 U.S.C. Section 1332 as there is diversity of citizenship and the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs. Plaintiffs bring this an action for declaratory judgment pursuant to the Federal Declaratory

1 Relief Act, 28 U.S.C. Section 2201, for purposes of determining an alleged, actual
2 controversy between the parties. All parties to the action have been served.

3 **2. Facts**

4 Plaintiffs allege that they were the general contractors for the construction of a
5 residential development titled The Essex on Lake Merritt, located at Lakeside Drive and 17th
6 Street in Oakland, California. Plaintiffs contend that Defendants issued two insurance policies
7 that covered the project during the time relevant to Plaintiffs' complaint. The HOA for the
8 project sued Plaintiff general contractors for construction defects. Upon receipt of the claim,
9 Defendants appointed defense counsel for Plaintiffs. The parties attended several mediations
10 in the underlying action. However, the underlying action did not settle prior to the filing of
11 this lawsuit. Subsequently, the construction defect action did settle with Defendants paying
12 for Plaintiffs portion of the settlement under a reservation of rights pursuant to *Blue Ridge*
13 *Ins. Co. v. Jacobsen* (2001) 25 Cal.4th 489. Plaintiffs allege that Defendants had a duty to
14 settle the underlying case earlier and that Plaintiffs have overpaid their \$100,000 deductible
15 for the project resulting in the filing of this lawsuit.

16 In the Complaint, Plaintiffs asserted three causes of action against Defendants: (1)
17 breach of contract - failure to settle; (2) breach of the implied covenant of good faith and fair
18 dealing - failure to settle; and (3) declaratory relief. Upon motion by Defendants, the Court
19 (1) dismissed Plaintiffs' claims premised on Defendants' alleged breach of the duty to settle;
20 (2) granted Defendants' motion to stay this action pending the completion of arbitration; (3)
21 compelled the parties to proceed with arbitration.

22 **3. Legal Issues**

23 This case is stayed pending the outcome of arbitration. (Document 36).

24 **4. Motions**

25 The Court granted Defendants' Motion to Compel Arbitration and granted in part
26 Defendants' Motion to Dismiss. (Document 36).

27 **5. Amendment of Pleadings**

28 This case is stayed pending the outcome of arbitration. (Document 36).

1 **6. Evidence Preservation**

2 This case is stayed pending the outcome of arbitration. (Document 36).

3 **7. Disclosures**

4 This case is stayed pending the outcome of arbitration. (Document 36).

5 **8. Discovery**

6 This case is stayed pending the outcome of arbitration. (Document 36).

7 **9. Class Actions**

8 This case is not a class action.

9 **10. Related Cases**

10 *Swinerton Builders v. American Home Assurance Co.* (Case No. 3:12-04350-SC)

11 **11. Relief**

12 This case is stayed pending the outcome of arbitration. (Document 36).

13 **12. Settlement and ADR**

14 This case is stayed pending the outcome of arbitration. (Document 36).

15 **13. Consent to Magistrate Judge For All Purposes**

16 The parties do not consent to a magistrate judge.

17 **14. Other References**

18 This case is stayed pending the outcome of arbitration. (Document 36).

19 **15. Narrowing of Issues**

20 This case is stayed pending the outcome of arbitration. (Document 36).

21 **16. Expedited Trial Procedure**

22 This case is stayed pending the outcome of arbitration. (Document 36).

23 **17. Scheduling**

24 This case is stayed pending the outcome of arbitration. (Document 36).

25 **18. Trial**

26 This case is stayed pending the outcome of arbitration. (Document 36).

27 **19. Disclosure of Non-party Interested Entities or Persons**

28 This case is stayed pending the outcome of arbitration. (Document 36).

20. Other

This case is stayed pending the outcome of arbitration. (Document 36).

Dated: September 26, 2013

/s/ Charles L. Fanning

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Dated: September 26, 2013

/s/ Marc J. Derewetzky

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CASE MANAGEMENT ORDER

The above ~~JOINT CASE MANAGEMENT STATEMENT & PROPOSED ORDER~~
is approved as the Case Management Order for this case and all parties shall comply with its
provisions. [In addition, the Court makes the further orders stated below:]

IT IS SO ORDERED. The Further CMC is reset for 12/5/13 at 10:30 a.m.
An updated Joint CMC Statement shall be filed by
Dated: 11/27/13.

UNITED STATES DISTRICT COURT
JUDGE

